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SY

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/700,320 01/12/01 WALTER

R LE-A-32-842

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EXAMINER

NGUYEN, H

ART UNIT

PAPER NUMBER

1617

DATE MAILED:

06/11/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/700,320

Applicant(s)

Walter et al.

Examiner

Helen Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: ____.

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DETAILED ACTION

The claimed priority of this application to German Application No. 19822036.7, filed on May 05, 1998, through PCT/EP99/02969, filed on May 03, 1999 under 37 U.S.C. 371, is acknowledged.

Claim rejection

The following is a quotation of the **second paragraph of 35 U.S.C. 112**:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 10, the term "are" is indefinite. Do Applicants intend "is"?

In claim 1, line 11, the comma is improper. It should be deleted.

In claim 1, Applicants specified "C" as an ancillary substance on line 7. However, in line 9 and 10, Applicants use the phrase "C) sugar and/or sugar alcohol.....". Does Applicants intend line 7 to be "ancillary substance comprising sugar and/or sugar alcohol....." as listed in line 9?

In claim 1, it is unclear as to when and how ingredient B is combined with the melt of C containing A.

In claim 2, line 2, the phrase "a melt" is vague. Do Applicants intend "the melt"?

Claim 2 recites the limitation "fusible" in line 3. There is insufficient antecedent basis for this limitation in the claim.

In claim 2, lines 5 and 6, the phrase "with component (i) or (ii), which is still missing" is indefinite. Do Applicants intend adding the component A (i) or A (ii) after B in the case where only A (ii) or A (i) respectively was previously melted with a sugar?

In claim 3, Do Applicants intend A (i) or A (ii) to be added to C in the extruder? Is the final composition of A, B and C in fact extruded?

The following is a quotation of the appropriate paragraphs of **35 U.S.C. 102** that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Leslie et al. (GB 2307857 A).

Leslie et al. teach an effervescent composition comprising CO₂ donor, acidic component, active agent, and sweetener. See page 2, paragraph 6-8. Leslie et al. also teach a preparation including granulation at 60°C. See page 4, last paragraph. Extrusion is disclosed. See page 3, the penultimate sentence (or lines 30-33).

As to the claimed sequence of melting and addition of components in claim 2, Applicants disclose that the method of Leslie et al. (see example 3 of GB '857) is equivalent to that claimed (see page 5, lines 5-11 in the Applicants' disclosure).

Claims 1-7 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen Nguyen whose telephone number is (703) 605-1198. The examiner can normally be reached on M-F (9:00-4:30).


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary, Edward J. Webman can be reached on (703) 308-4432 or supervisor, Minna Moezie can be reached on (703) 308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Helen Nguyen
Patent Examiner

June 11, 2001



EDWARD J. WEBMAN
PRIMARY EXAMINER
GROUP 1500